Supreme Court, U.S.
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No. 01-1279

In The

Supreme Court of the United States

SEACOAST MOTORS OF SALISBURY, INC.,

Petitioner,

v.

DAIMLERCHRYSLER MOTORS CORPORATION,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether this Honorable Court should review the judgment of the Court of Appeals for the First Circuit affirming the dismissal of Petitioner's challenge to a domestic arbitration award in favor of Respondent, where the Court of Appeals' express rejection of the so-called *American Safety* doctrine does not conflict with a decision of any other United States Court of Appeals that has considered *American Safety* and its progeny following, as described by the Court of Appeals for the Ninth Circuit, this Court's "meticulous step-by-step disembowelment" of the doctrine in its intervening decisions, and where sufficient independent grounds otherwise exist to affirm regardless of the current validity of *American Safety*.

STATEMENT PURSUANT TO RULE 29.6

DaimlerChrysler Motors Corporation, now known as DaimlerChrysler Motors Company, LLC, is wholly owned by DaimlerChrysler North America Holding Corporation, which in turn is a wholly owned subsidiary of a publicly held parent company, DaimlerChrysler AG.

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BRIEF IN OPPOSITION

DaimlerChrysler Motors Corporation ("DaimlerChrysler") respectfully opposes the petition of Seacoast Motors of Salisbury, Inc. ("Seacoast") for a writ of certiorari to review the judgment of the Court of Appeals for the First Circuit in this case. Seacoast has failed to present any compelling reason that justifies this Court's review. *See generally* Rule 10 of the Supreme Court Rules.

FEDERAL STATUTES INVOLVED

In its Petition for Writ of Certiorari, Seacoast has omitted any reference to Sections 10 and 12 of the Federal Arbitration Act ("FAA"). 9 U.S.C. §§10, 12 (2002). Both of these statutes are implicated by the petition, because DaimlerChrysler advanced the threshold argument below that Seacoast's complaint was time-barred under Section 12 of the FAA. Pet., App. 5a-7a, 15a. Although the Court of Appeals elected to assume *arguendo* the timeliness of Seacoast's challenge in order to reach the merits of the appeal, DaimlerChrysler respectfully submits that Seacoast's failure to comply with Section 12 of the FAA constitutes sufficient independent grounds to affirm the dismissal of Seacoast's cause of action. Pet., App. 7a. The full text of Sections 10 and 12 of the FAA is set forth below.

§10. Same; vacation; grounds; rehearing.

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating

the award upon the application of any party to the arbitration

(1) Where the award was procured by corruption, fraud, or undue means.

(2) Where there was evident partiality or corruption in the arbitrators, or either of them.

(3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(5) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

(b) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

§12. Notice of motions to vacate or modify; service; stay of proceedings.

> Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

STATEMENT OF THE CASE

Seacoast's statement of the case is incomplete and misleading. Pet., 2-3. By the express terms of its complaint, Seacoast sought, pursuant to Section 10 of the FAA, to vacate the domestic arbitration award entered in favor of DaimlerChrysler on May 25, 2000. Pet., App. 17a. Seacoast further requested that the District Court adjudicate the merits of Seacoast's state law claims against DaimlerChrysler under Massachusetts General Laws, Chapter 93B. ("G.L. c. 93B"). Pet., App. 17a-22a. In requesting that the award be vacated, Seacoast relied on

several grounds, including a conclusory contention that its claims asserted under G.L. c. 93B were inappropriate for enforcement by arbitration, because G.L. c. 93B is "an anti-trust statute." Pet., App. 19a-20a.

DaimlerChrysler moved for dismissal with prejudice under Fed. R. Civ. P. 12(b)(6) on three independent grounds:

1. Seacoast's complaint was time-barred under Section 12 of the FAA, because Seacoast failed to serve DaimlerChrysler with notice of the complaint within three months after the arbitration award was filed or Seacoast received the award;

2. Even assuming *arguendo* that Seacoast complied with Section 12, Seacoast nevertheless failed to allege a sufficient basis under Section 10 of the FAA to vacate the award; and/or,

3. The issue of arbitrability was previously decided against Seacoast in *Seacoast Motors of Salisbury, Inc. v. Chrysler Corporation*, 959 F. Supp. 52, 56 (D. Mass. 1997).

Pet., App. 14a-15a.

The District Court granted DaimlerChrysler's motion to dismiss without any written opinion. Pet., App. 13a. In affirming, the Court of Appeals elected to determine the merits of the appeal, in particular the viability of the so-called *American Safety* doctrine as enunciated in *American Safety Equip. Corp. v. J.P. Maguire & Co.*, 391 F.2d 821, 825 (2nd Cir. 1968), rather than decide the threshold procedural and legal deficiencies of Seacoast's cause of action. Pet., App. 4a-11a. Although expressing doubt as to

the strength of either assumption, the Court of Appeals assumed *arguendo* that Seacoast's appeal was not time-barred and that Seacoast's claims under G.L. c. 93A were antitrust in nature. Pet., App. 5a-9a. DaimlerChrysler respectfully represents that Seacoast's failure to comply with Section 12 and its erroneous characterization of G.L. c. 93B as an antitrust statute each constitutes sufficient independent grounds for affirming irrespective of the current validity of the *American Safety* doctrine in the First Circuit. Seacoast's prosecution of this petition ignores both of these legal infirmities.

REASONS FOR DENYING THE PETITION

The sole reason advanced by Seacoast for this petition is that "this case is the appropriate vehicle to resolve the conflict in the circuits" with regard to the *American Safety* doctrine. Pet., 4. DaimlerChrysler respectfully submits that both Seacoast's underlying assumption of conflicting law and its presumption as to the appropriateness of this case for a writ of certiorari are incorrect.

I.

SEACOAST HAS FAILED TO ESTABLISH THAT THE RULING BY THE COURT OF APPEALS FOR THE FIRST CIRCUIT CONFLICTS WITH A DECISION OF ANY OTHER UNITED STATES COURT OF APPEALS THAT HAS CONSIDERED *AMERICAN SAFETY* AND ITS PROGENY IN LIGHT OF THIS COURT'S INTERVENING DECISIONS.

Seacoast's bald contention that the circuits are in conflict over the arbitrability of domestic antitrust

disputes misstates the current state of the law. Initially, the petition fails to identify any United States Court of Appeals decision that conflicts with the conclusion of the Court of Appeals in this case to "lay [the *American Safety* doctrine] to rest". Pet., App. 9a-10a. On the contrary, by expressly incorporating by reference the opinion of the Court of Appeals into the petition, Seacoast advances the argument that the Court of Appeals' rejection of *American Safety* is fully consistent with those circuits that have abandoned *American Safety* in its entirety and those circuits that have expressed doubt whether *American Safety* remains good law. Pet. 5; Pet., App. 9a-10a.

Moreover, Seacoast entirely ignores what has been described by the Court of Appeals for the Ninth Circuit as this Court's "meticulous step-by-step disembowelment of the *American Safety* doctrine" in *Mitsubishi Motors Corporation v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 105 S. Ct. 3346, 87 L. Ed. 2d 444 (1985); *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 107 S. Ct. 2332, 96 L. Ed. 2d 185 (1987); and *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 111 S. Ct. 1647, 114 L. Ed. 2d 26 (1991). *Nghiem v. NEC Elec., Inc.*, 25 F.3d 1437, 1441-1442 (9th Cir.), *cert. denied*, 513 U.S. 1044, 115 S. Ct. 638, 130 L. Ed. 2d 544 (1994). Guided by these intervening decisions, as well as *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 109 S. Ct. 1917, 104 L. Ed. 2d 526 (1989), the Courts of Appeals for both the Ninth Circuit, in *Nghiem*, and the Eleventh Circuit have explicitly rejected *American Safety* and its progeny[1] as

[1] Prior to *Mitsubishi*, the Courts of Appeals for the Fifth, Seventh, Eighth, and Ninth Circuits followed the lead of

controlling precedent and have held that domestic antitrust claims are arbitrable. *Kotam Elecs., Inc. v. JBL Consumer Prods., Inc.*, 93 F.3d 724, 725-728 (11th Cir. 1996), *cert. denied*, 519 U.S. 1110, 117 S. Ct. 946, 136 L. Ed. 2d 835 (1997).

Indeed, the Court of Appeals for the Second Circuit appears to have refuted its previous decision in *American Safety* by affirming without opinion a district court's holding that in "the aftermath of [this Court's] decisions it seems unlikely that the principle of *Mitsubishi* will be limited to international transactions . . . the reasoning of *Mitsubishi* should apply with equal force to domestic claims." *Hough v. Merrill Lynch, Pierce, Fenner & Smith*, 757 F. Supp. 283, 286 (S.D.N.Y.), *aff'd without op.*, 946 F.2d 883 (2d Cir. 1991). Lower court cases have assumed such a refutation and have themselves rejected *American Safety* as controlling precedent in the Second Circuit. *See, e.g., Syscomm International Corporation v. Synoptics Communications, Inc.*, 856 F. Supp. 135, 139 (E.D.N.Y. 1994) ("While *American Safety* has not been explictly overruled, this Court believes . . . the Second Circuit would now hold that the principle of *Mitsubishi* is not limited to antitrust claims arising in international transactions, and that domestic antitrust claims are arbitrable"); *Gemco Latinoamerica, Inc. v. Seiko Time Corp.*, 671 F. Supp. 972, 980

American Safety in concluding that federal antitrust claims are not arbitrable. *Cobb v. Lewis*, 488 F.2d 41, 47 (5th Cir. 1974); *University Life Ins. Co. v. Unimarc Ltd.*, 699 F.2d 846, 850-851 (7th Cir. 1983); *Helfenbein v. International Indus., Inc.*, 438 F.2d 1068, 1070 (8th Cir.), *cert. denied*, 404 U.S. 872, 92 S. Ct. 63, 30 L. Ed. 2d 115 (1971); and *Lake Communications, Inc. v. ICC Corp.*, 738 F.2d 1473, 1479 (9th Cir. 1984).

(S.D.N.Y. 1987), *adhered to, in part, on other grounds, dismissed, in part, on other grounds, on reconsideration*, 685 F. Supp. 400 (S.D.N.Y. 1988) ("none of the justifications for the *American Safety* doctrine retain their vigor . . . our Court of Appeals would now hold that domestic antitrust claims are subject to arbitration.").

In addition, the following six circuits, while not explicitly deciding the issue, have expressed doubt as to the current validity of the *American Safety* doctrine:

The Third Circuit in *Hays & Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 885 F.2d 1149, 1154 n.8 (3rd Cir. 1989), in generally discussing the change in the legal landscape with respect to the enforcement of arbitration decisions, cited *Mitsubishi* for the general proposition that antitrust claims, without distinction between domestic and international transactions, are arbitrable. *See also N.Y.C. Discount Shoe Co., Inc. v. Coray Management, Inc.*, 1987 U.S. Dist. LEXIS 3713, *12-13 (E.D. Pa. May 7, 1987) (concluding as a matter of law that plaintiffs' antitrust claims are arbitrable).

The Fourth Circuit in *Gilmer v. Interstate/Johnson Lane Corp.*, 895 F.2d 195, 201 (4th Cir. 1990), later affirmed by this Court in *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 111 S. Ct. 1647, 114 L. Ed. 2d 26 (1991), in finding "no reason to suppose that ADEA claims are inherently ill-suited to arbitration," stated that in ruling that "antitrust and RICO claims were not beyond the ken of arbitrators, the Supreme Court brushed aside objections that such statutory claims were too complex for arbitrators to handle . . . ADEA disputes are, to put it mildly, no more generically complex than claims presented under the

Sherman Act and RICO." Furthermore, the Fourth Circuit, citing *Mitsubishi* and *McMahon*, stated "the Sherman Act reflects an important federal policy in preventing excessive concentration in relevant markets. Nonetheless, arbitration of claims under [this statute] is clearly encouraged." *Gilmer*, 895 F.2d at 202.

The Fifth Circuit in *Mayaja, Inc., S.A. v. Bodkin*, 803 F.2d 157, 162 n.6 (5th Cir. 1986), subsequently vacated by this Court and remanded for further consideration in light of *McMahon* in *Shearson Lehman Bros., Inc. v. Mayaja, Inc.*, 482 U.S. 923, 107 S. Ct. 3205, 96 L. Ed. 2d 692 (1987), noted that although "the Supreme Court did not explicitly overrule *American Safety* in the domestic context, *Mitsubishi* rejected so much of *American Safety's* reasoning it is difficult to say what is left of the opinion to rely on." *See also Smoky Greenhaw Cotton Co., Inc. v. Merrill Lynch, Pierce, Fenner and Smith, Inc.*, 785 F.2d 1274, 1282 (5th Cir. 1986) (*per curiam, on petition for rehearing and suggestion for rehearing en banc*) (stating, though not in an antitrust context, that "although *Mitsubishi* arose in an international antitrust dispute and its holding purports to be limited to that context, we believe that its broad language may carry significance for domestic disputes as well"), *cert. denied*, 482 U.S. 928, 107 S. Ct. 1211, 96 L. Ed. 2d 698 (1987).

The Seventh Circuit in *Sanjuan v. American Bd. Of Psychiatry and Neurology, Inc.*, 40 F.3d 247, 250 (7th Cir. 1994), *cert. denied*, 516 U.S. 1159, 116 S. Ct. 1044, 134 L. Ed. 2d 191, (1996), citing *Mitsubishi* and *Nghiem*, reasoned that companies "may agree to arbitrate their antitrust disputes – certainly so for international transactions, . . . and likely so for domestic transactions."

See also Kowalski v. Chicago Tribune Co., 854 F.2d 168, 173 (7th Cir. 1988) ("it seems unlikely after *McMahon* that the principle of *Mitsubishi* can be confined to international transactions").

The Eighth Circuit in *Swensen's Ice Cream Co. v. Corsair Corporation*, 942 F.2d 1307, 1310 (8th Cir. 1991), stated in *dicta* that, in view of *Mitsubishi* and *McMahon*, its prior holding in *Helfenbein v. International Indus., Inc., supra*, that "domestic antitrust violations are not subject to arbitration" may "no longer be a correct statement of the law". *See also id.* at 1311 (Beam, J., dissenting) (*Mitsubishi*, *McMahon* and *Gilmer* dictate that antitrust claims are subject to arbitration); *Hunt v. Up North Plastics, Inc.*, 980 F. Supp. 1046, 1050 (N.D. Minn. 1997) (antitrust claim in case is arbitrable).

The Tenth Circuit in *Coor's Brewing Company v. Molson Breweries*, 51 F.3d 1511, 1515 (10th Cir. 1995), in considering the scope of an arbitration clause, found that antitrust claims that implicated the licensing agreement were arbitrable.

Only two circuits have not had occasion to reconsider *American Safety* and its progeny in light of this Court's intervening decisions – the Sixth Circuit and the District of Columbia Circuit. However, their pre-*Mitsubishi* rulings rejecting the arbitrability of domestic antitrust claims were based on decisions that have been subsequently overruled. The Sixth Circuit in *Buffler v. Electronic Computer Programming Institute, Inc.*, 466 F.2d 694, 700 (6th Cir. 1972), relied in part on Ninth Circuit decisions that were overruled by *Nghiem*, 25 F.3d at 1441-1442. The District of Columbia Circuit in *Lee v. Ply*Gem Industries,*

Inc., 593 F.2d 1266, 1274-1275 (D.C. Cir.), *cert. denied*, 441 U.S. 967, 99 S. Ct. 2417, 60 L. Ed. 2d 1073 (1979), relied in part on *Cobb v. Lewis*, 488 F.2d 41 (5th Cir. 1974). *Cobb* was subsequently rejected as controlling law in *Kotam Elecs., Inc.*, 93 F.3d at 725-728. *See also Western Int'l Media Corp. v. Johnson*, 754 F. Supp. 871, 872-873 (S.D. Fla. 1991) (rejecting *Cobb* as controlling precedent in light of *Mitsubishi* and *McMahon*).

In view of this Court's complete erosion and implicit overruling of *American Safety* and its progeny, as recognized by the Courts of Appeals that have considered the issue, the purported conflict assumed by Seacoast does not exist, and further clarification by this Court is unnecessary.

II.

SUFFICIENT INDEPENDENT GROUNDS EXIST TO AFFIRM THE DISMISSAL OF SEACOAST'S COMPLAINT REGARDLESS OF THE CURRENT VALIDITY OF THE *AMERICAN SAFETY* DOCTRINE.

In any event, this case is hardly, as presumed by Seacoast, "the appropriate vehicle" to resolve any uncertainty that may exist as to the viability of *American Safety*. Sufficient alternative grounds exist for affirming without ever reaching the application of *American Safety* to Seacoast's claims. First, as determined by the Court of Appeals, it is uncontraverted that Seacoast failed to serve notice of the action on DaimlerChrysler within three months of the filing of the arbitration award as required by Section 12 of the FAA. Pet., App. 5a. If Seacoast is

held, as it should be, to the express jurisdictional predicate of its complaint under Section 10 of the FAA, then, as acknowledged by the Court of Appeals, Seacoast is time-barred under Section 12. Pet., App. 5a. Seacoast's attempt to escape Section 12's three month limitations period by framing its suit as an independent equitable action to enjoin the award should be treated as an unavailing elevation of form over substance.

Alternatively, Seacoast's reliance on *American Safety* hinges entirely on the threshold presumption that G.L. c. 93B is an antitrust statute. Seacoast has yet to cite any authority at any point throughout these lengthy proceedings commenced in 1996, that describes or characterizes its claims against DaimlerChrysler under G.L. c. 93B as antitrust in nature. The petition is conspicuously silent on the issue. Indeed, the Court of Appeals recognized that to "describe [Seacoast's] Chapter 93B claim as 'antitrust' is a very dubious use of language" and went to great lengths to distinguish G.L. c. 93B from antitrust laws. Pet., App. 8a-9a. Nevertheless, in order to reach the merits, the Court of Appeals assumed *arguendo* that Seacoast's claim "could be classified as an antitrust claim." Pet., App. 9a. DaimlerChrysler respectfully submits that Seacoast's claims under G.L. c. 93B are not antitrust claims, and that infirmity alone constitutes sufficient grounds to affirm the dismissal of Seacoast's cause of action without determining the precedential value of *American Safety*. Given the existence of these alternative grounds for affirmance, there is no compelling reason for this Court to grant the petition.

CONCLUSION

For all of the foregoing reasons, DaimlerChrysler respectfully requests that this Honorable Court deny Seacoast's petition for a writ of certiorari.

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